

# **EXHIBIT 23**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

vs.

Case No.

UBER TECHNOLOGIES, INC.; 17-cv-00939-WHA

OTTOMOTTO, LLC; OTTO

TRUCKING LLC,

Defendants.

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HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF JOE SPIEGLER

San Francisco, California

Friday, December 22, 2017

Volume I

REPORTED BY:

REBECCA L. ROMANO, RPR, CSR No. 12546

JOB NO. 2771356

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1           A.     Yeah, which I think was an  
2     internally-developed instant messaging.

08:39:47

3 Q. Did you use HipChat or uChat while you  
4 were at Uber?

5                    A.    Yes.

08:39:55

6 Q. Do you know what the -- what the  
7 retention settings were for HipChat?

8                      A.      No.

9 Q. What about uChat?

10                      A.      No .

08:40:08

11 Q. Do you know if you had the ability to  
12 change the settings yourself on the chats you were  
13 conducting through those services?

14           A.    I don't know.

15 Q. While you were at Uber, were you aware  
16 that other people in the company were using  
17 ephemeral communications to carry on business?

08:40:27

18 MR. JACOBS: Objection. Vague.

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19         Are you -- are you including HipChat and
20         uChat in that?
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08:40:39

21 MR. EISEMAN: Let me -- that's a good  
22 objection. So let me ask a different question.

23 Q. (By Mr. Eiseman) Were you familiar with  
24 the fact that people at Uber were using Wickr to --  
25 to carry on business activities?

08:40:50

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1           A.    At the time I was employed by the  
2   company?

08:40:53

3           Q.    Right.

4           A.    I don't -- I don't know if they were. I  
5   have no independent knowledge that employees of the  
6   company use that or other ephemeral software.

08:41:06

7           Q.    So when you say you don't have any  
8   independent knowledge, you are separating out some  
9   other kind of knowledge you have?

10          A.    Well, I recall receiving at some point an  
11   email from Wickr, or something that looked like a  
12   Wickr-related email, and I -- I didn't install  
13   anything. I didn't use it.

08:41:19

14                I then recall there was an email from the  
15   litigation group about potentially using Wickr, and  
16   then an email followed up shortly after saying not  
17   to use Wickr.

08:41:38

18          Q.    Who did you -- do you recall who you  
19   received the email from?

20          A.    I don't recall. I don't.

08:41:51

21          Q.    Remember, Ground Rule No. 3, that we  
22   didn't talk about, is that I need to try to let you  
23   finish your answer before I ask my next question,  
24   and -- and vice-versa, hopefully.

25          A.    Okay.

08:41:58

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1 Q. Are you familiar with the term  
2 "nonattributable devices"?

08:42:03

3 A. No.

4 Q. Were you ever instructed at Uber to use  
5 ephemeral communications to carry out business  
6 activities?

08:42:27

7 A. No.

8 Q. Do you recall any training sessions at  
9 Uber regarding the use of ephemeral communications?

10 A. Again, I -- to the extent HipChat or  
11 uChat are considered ephemeral, I recall there  
12 was a -- a company meeting on the -- you know, on  
13 the launch of uChat. There's some people that  
14 weren't very happy with it and...

08:42:44

15 Q. Why is that?

08:43:00

16 A. I think it was kind of spotty, so --  
17 but -- but other than HipChat or uChat, no, I don't  
18 recall any discussions or --

19 Q. Were you --

20 A. -- training.

08:43:11

21 Q. I'm sorry. Were you ever encouraged or  
22 instructed to use Zoom or telephone conferences to  
23 carry out business activities, so that there  
24 wouldn't be a record of the communications?

25 A. No.

08:43:24

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1 given, that that is -- that you agree that is not a 09:01:37  
2 waiver of the privilege.

3 MR. EISEMAN: And I do agree that's not a  
4 waiver of the privilege.

5 MR. JACOBS: Terrific. So I think -- 09:01:44  
6 well, so, you can ask the ones you are interested  
7 in.

8 Q. (By Mr. Eiseman) The first question I  
9 have is: I asked you, Mr. Spiegler, about training  
10 that Mr. Clark performed to the ATG group in 09:01:56  
11 Pittsburgh regarding the use of the attorney-client  
12 privilege.

13 Are you aware that he conducted --

14 A. I'm not aware that he did conduct that.

15 Q. All right. Are you aware that 09:02:06  
16 Mr. Kalanick instructed employees to mark documents  
17 as privileged, so that they would not be subject to  
18 discovery?

19 A. No.

20 Q. Are you aware of any other Uber employees 09:02:21  
21 instructing other employees to mark documents as  
22 privileged so that they would not be subject to  
23 discovery?

24 MR. JACOBS: If the answer is, I have no  
25 such awareness, you can answer that; if you have 09:02:33

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1 some awareness based on an investigation you  
2 conducted, then I instruct not to answer.

09:02:36

3 THE DEPONENT: No, I don't have any  
4 awareness.

5 Q. (By Mr. Eiseman) One other question that  
6 Mr. Jacobs gave you an instruction on had to do  
7 with the investigations that you discussed with  
8 Mr. Clark when you were at Uber.

09:02:44

9 Apart -- well, and I think you told us  
10 that you didn't discuss the Jacobs' allegations  
11 with Mr. Clark; is that right?

09:02:57

12 A. I believe that's right.

13 Q. Do you recall discussing any other  
14 investigations with Mr. Clark --

15 A. Yes.

09:03:11

16 Q. -- specifically?

17 A. Yes.

18 MR. JACOBS: And, here, if the proposed  
19 answer is something -- is along the lines of, none  
20 of them are even remotely close to issues in the  
21 Waymo case, he can answer that.

09:03:16

22 I don't think getting into specific  
23 investigations he might have conducted is  
24 appropriate.

25 MR. EISEMAN: I may ask one other

09:03:28

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1 clarify my answer, again my -- my recommendations 11:15:23  
2 to her as my peer was that we should not be sharing  
3 the allegations to implicated parties.

4 Q. (By Mr. Eiseman) Did you have any  
5 discussions with Ms. Padilla about sharing 11:15:36  
6 Mr. Jacobs' allegations with anyone else in the  
7 Uber legal department?

8 A. I -- I do recall having some discussions.

9 Q. What discussions did you have?

10 A. I -- I was concerned about whether -- I 11:15:56  
11 was concerned about the wide dissemination of this  
12 information for a variety of reasons.

13 Q. Why were you concerned?

14 A. Well, one reason is that the security  
15 team itself -- that is authorized by the company to 11:16:14  
16 conduct investigations of certain alleged  
17 misconduct, you know, for instance, misuse of -- of  
18 company assets, and as a result of that, they have  
19 investigative tools that they are authorized to  
20 utilize, and that includes email review. 11:16:30

21 And these individuals had been made aware  
22 that there were allegations against them, and I was  
23 concerned that they may try to obtain improperly,  
24 in my view, information about the investigation or  
25 its progress. And so the more broadly that 11:16:48

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1 information was disseminated, the greater 11:16:52  
2 likelihood that they could do so.

3 Second, I recall -- and this may be  
4 incorrect, but I recall that one of Angela's direct  
5 reports was very good friends with one of the 11:17:03  
6 implicated parties, and I didn't want to put him in  
7 an awkward position where he would be sitting on  
8 information about a good friend. And I didn't see  
9 how -- I -- I didn't know what information or -- or  
10 support, aside from email collection, that the 11:17:28  
11 litigation team could provide to a compliance  
12 investigation.

13 So since my general protocol is put --  
14 you know, provide information on a need-to-know  
15 basis, I didn't see the need, again, for the 11:17:44  
16 litigation team, other than our ediscovery manager,  
17 for purposes of email holds and, you know, to allow  
18 for email review, there was really no -- there was  
19 no need to share this information. And of course  
20 there's other principles of investigations for me 11:18:00  
21 come into play, which are to protect the integrity  
22 and reputation of the individuals against whom  
23 allegations are raised. These were serious  
24 allegations. I don't know if they are true, I  
25 don't know if they are not true, but I certainly 11:18:13

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1 don't think it's in anybody's interest to make 11:18:17  
2 others aware of allegations that may turn out not  
3 to be true, particularly since there is really  
4 nobody in the litigation department, aside from the  
5 ediscovery manager, that would participate in the 11:18:31  
6 investigation and play any role in the compliance  
7 investigation.

8 Q. Who was Ms. Padilla's direct report that  
9 you were worried about having access to this  
10 information because of that person's relationship 11:18:45  
11 with one of the implicated parties?

12 MR. JACOBS: And just to be clear, I'm  
13 going to designate this transcript as outside  
14 counsel only, and we will request review pursuant  
15 to our usual 30-day review or whatever we have 11:18:57  
16 agreed to.

17 Obviously this is now getting into  
18 sensitive, you know, people information.

19 THE DEPONENT: Yeah.

20 MR. JACOBS: Is there a way you can ask 11:19:12  
21 this that doesn't require identification of the  
22 person?

23 I think what you wanted -- you want to  
24 know is if this -- what this person's role was in  
25 litigation vis-a-vis the Waymo litigation perhaps, 11:19:19

1 I, Rebecca L. Romano, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 certify:

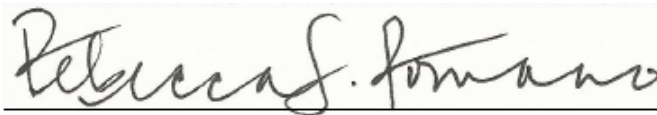
4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that any witnesses in the foregoing proceedings,  
7 prior to testifying, were administered an oath;  
8 that a record of the proceedings was made by me  
9 using machine shorthand which was thereafter  
10 transcribed under my direction; that the foregoing  
11 transcript is true record of the testimony given.

12 Further, that if the foregoing pertains to the  
13 original transcript of a deposition in a Federal  
14 Case, before completion of the proceedings, review  
15 of the transcript [X] was [ ] was not requested.

16 I further certify I am neither financially  
17 interested in the action nor a relative or employee  
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date  
20 subscribed my name.

21 Dated: December 26, 2017

22  
23 

24 Rebecca L. Romano, RPR,  
25 CSR. No 12546